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Kraig W. Moore
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Kalispell, MT 59901
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Attorneys for Plaintiff

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

MICHAELA ERICKSON,

Plaintiff,

v.

**LOWE'S HOME CENTERS LLC d/b/a
LOWE'S and JOHN DOES 1-3;**

Defendants(s).

Cause No. _____

**COMPLAINT and DEMAND FOR
JURY TRIAL**

Plaintiff, Michaela Erickson, states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Michaela Erickson ("Erickson") was a citizen of Montana where the collision occurred and where defendant had a duty to pay his medical expenses.
2. Defendant Lowe's Home Centers LLC ("Lowe's") is a foreign corporation authorized to do business in the state of Montana.
3. This Court has jurisdiction over the subject matter and parties of this Complaint
4. Venue is appropriate in Flathead County because the motor vehicle collision which is the subject of this Complaint occurred in Flathead County.
5. Defendants John Does 1-3 are other people or entitles that may be liable to Erickson for the damages alleged. To the extent necessary, Plaintiff may need to amend pleadings to

name the proper parties responsible for Plaintiff's injuries and damages, if new information surfaces.

FACTUAL BACKGROUND

6. On December 17, 2019, Erickson was rear-ended by a Lowe's vehicle in Flathead County, Montana.
7. Erickson had turned left onto E 2nd St. in Whitefish, Montana from Spokane Ave and was struck from the rear by the Lowes truck.
8. Erickson's vehicle was severely damaged and towed from the scene.
9. Erickson suffered bodily injuries in the wreck.
10. The driver of the Lowe's truck, Rodney T. Penner, an employee of Lowes, stated he did not have enough time to apply his brakes and rear-ended Erickson. He was issued a citation for following too closely.
11. A copy of the Crash Investigator's Report is attached as **Exhibit 1**.
12. Lowes, through its claims management company, "Sedgwick Claims Services, Inc." ("Sedgwick") has disputed causation and refused to advance-pay accumulated medical expenses.

COUNT I – NEGLIGENCE

13. All allegations above are incorporated herein.
14. Defendant Lowes owed a duty to Plaintiff and breached this duty when its employee negligently and recklessly operated his large cargo truck into the rear of Ms. Erickson's vehicle.
15. As a direct and proximate result of the negligence of the Defendant, Ms. Erickson sustained bodily injuries resulting in pain and disability, aggravation, emotional distress, and

permanent physical impairment entitling her to recover general compensatory damages in amounts not now precisely known, the exact amounts to be proven at or before the time of trial.

16. As a further direct and proximate result of the negligent acts and omissions of Defendant, Ms. Erickson incurred bodily injuries resulting in reasonable and necessary medical treatment, both past, present, and future, entitling her to recover special damages in amounts not now precisely known, the exact amounts to be proven at or before the time of trial.

17. As a further direct and proximate result of the negligent acts and omissions of Defendant, Ms. Erickson sustained bodily injuries that prevented her from doing her usual and ordinary occupation and/or job, thereby causing her to incur a loss of wages and/or loss of future earning capacity, entitling her to recover special damages for said loss in amounts not now precisely known the exact amounts to be proven at or before the time of trial.

18. As a further direct and proximate result of the negligent acts and omissions of Defendant, Ms. Erickson is entitled to recover statutory and reasonable attorney's fees and costs in amounts not now precisely known, the court to set the amounts in the future.

19. With respect to the items of special damages alleged by Plaintiff, she is entitled to recover prejudgment interest, pursuant to statute, in amounts not now precisely known, the exact amounts to be proven at or before the time of trial.

COUNT II – NEGLIGENCE PER SE

20. All allegations above are incorporated herein.

21. That Defendant Lowe's employee, in the operation of a motor vehicle, failed to operate the vehicle with reasonable care, in violation of Mont. Code Ann. § 27-1-701.

22. That Defendant Lowe's employee, in the operation of a motor vehicle violated Mont. Code Ann. § 61-8-329 (following too closely).
23. Defendant Lowe's employee violated said safety laws intended to prevent collisions and injuries of the type suffered by Plaintiff.
24. Defendant Lowe's employee's violation of the statutes was the direct and proximate cause of Plaintiff's damages and injuries described.

COUNT III

NEGLIGENCE & NEGLIGENCE PER SE

(as to Defendants John Does 1 – 3)

25. Plaintiff re-alleges the allegations set forth in paragraphs 1 through 24.
26. Plaintiff alleges alternatively that individuals or entities denoted as John Does 1-3 were negligent and responsible for injury to Plaintiff. Plaintiff is uncertain as to the identity of others involved in the motor vehicle collision at issue or causing it, or otherwise being negligent, but in the event others may be responsible for negligence and injuries sustained by Plaintiff, Plaintiff asserts claims against these unknown parties. Other entities and or persons may be involved with and responsible for the negligence and injuries sustained by Plaintiff as the incident arose from a motor vehicle crash, involves transient parties, and Plaintiff has relied upon the Crash Investigator's Report of the police agency which responded for the identity of the defendant driver and at fault-party.

WHEREFORE, Plaintiff prays for a judgment of liability against Defendant as follows:

1. For a judgment against Defendant Lowe's;
2. For an award of damages as set forth in the above Complaint, including prejudgment interest and statutory and reasonable fees and costs in such amounts that may be

awarded by the Court;

3. For punitive damages against Defendant Lowe's;
4. For such other and further relief as the Court deems just and appropriate.

JURY DEMAND



1. Plaintiff hereby demands a jury trial on all claims triable by right.

Dated: May 11, 2022

BLIVEN LAW FIRM, P.C.

By: s/ Aaron J. Brann
Aaron J. Brann
704 South Main
Kalispell, MT 59901
Attorneys for Plaintiff

EXHIBIT 1

Local Use		2019-00015133										CRASH INVESTIGATOR'S REPORT																	
Crash Number		H&R Run		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Pages: Number 1 of 2		Number of Vehicles 2		Pedestrians																			
Year	Agency	ID Number	Month	Seq No	Date of Crash	Time	Name of City	City Code	Name of County	County Code																			
19	120	1064	12	1	12/17/19	8:20	Whitefish		*Flathead	7	12																		
Occurred On					At Intersection Of					Miles					Of														
SPOKANE AVE					E 2ND ST																								
If Not At Intersection					Of					(Location Code)																			
Feet					Miles					N S E W																			
Class of Trafficway		Grade & Horiz Align		Relation to Roadway		Relation to Junction		Latitude		Longitude																			
6		1		1		2																							
Construction/Maintenance Zone		Site Study Suggested		Speed Limit		Speed Limit Units		Traffic Controls		Bikeway		Reservation																	
0		0		2, 5		MPH		0		1		1																	
COPY															Range					Township					Section				
															COLLISION TYPE - Multiple Veh.														
1 Rear-End					2 Side-End, Same Direction					3 Side-End, Opposite Direction					4 Left Turn, Same Direction					5 Left Turn, Opposite Direction									
6 Right Angle					7 Right Turn, Same Direction					8 Right Turn, Opposite Direction					9 Head-On					0 Other									
																				1									
Police Photos															Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>														
DRIVER 1 <input checked="" type="checkbox"/> PEDESTRIAN <input type="checkbox"/>															DRIVER 2 <input checked="" type="checkbox"/> PEDESTRIAN <input type="checkbox"/>														
Driver's Name (Last) First Middle										Driver's Name (Last) First Middle																			
PENNER RODNEY TODD										ERICKSON MICHAELA ROCHELLE																			
Address - Number and Street										Address - Number and Street																			
520 4TH AVE E										133 ASHLEY HILLS DR																			
City State Zip Code										City State Zip Code																			
COLUMBIA FALLS MT 59912										Kalispell MT 59901																			
Driver License Number										Driver License Number																			
0303219694111										0608619934113																			
Date of Birth										Date of Birth																			
03111969										060861993																			
Driver License Status										Driver License Status																			
Restriction Compliance										Restriction Compliance																			
Other Licensing Data										Other Licensing Data																			
Insurance Carrier										Insurance Carrier																			
OLD REPUBLIC INSURANCE COMPANY										PROGRESSIVE DIRECT INSURANCE																			
Violation Code 1										Violation Code 1																			
61-8-329(1)																													
Summons No. 1										Summons No. 1																			
E, 3, 1, 9, 6, 4																													
Violation Code 2										Violation Code 2																			
Summons No. 2										Summons No. 2																			
Policy Number										Policy Number																			
MWTB 311325										926437275																			
Vehicle 1 Commercial <input checked="" type="checkbox"/>															Vehicle 2 Commercial <input type="checkbox"/>														
Owner															Owner														
<input type="checkbox"/> Same as Driver															<input checked="" type="checkbox"/> Same as Driver														
PENSKE TRUCK LEASING CO LP																													
Number and Street															Number and Street														
2675 MORGANTOWN RD																													
City State Zip Code															City State Zip Code														
READING PA 19607																													
Vehicle Identification Number															Vehicle Identification Number														
3ALACWFC4LDLY2887															3FADP4EJ0HM1S0705														
License Plate Number															License Plate Number														
2891864															CLG361														
Vehicle Make															Vehicle Make														
Ford															Ford														
Vehicle Year															Vehicle Year														
20															17														
License State															License State														
IN															MT														
Vehicle Damage															Vehicle Damage														
 <input type="checkbox"/> No Damage <input checked="" type="checkbox"/> Undercarriage <input type="checkbox"/> Vehicle Damage (a) If Over \$1000 <input checked="" type="checkbox"/>															 <input type="checkbox"/> No Damage <input checked="" type="checkbox"/> Undercarriage <input type="checkbox"/> Vehicle Damage (a) If Over \$1000 <input checked="" type="checkbox"/>														
Vehicle Damage Severity															Vehicle Damage Severity														
<input type="checkbox"/> None <input checked="" type="checkbox"/> Disabling <input type="checkbox"/> Functional <input type="checkbox"/> Other															<input type="checkbox"/> None <input checked="" type="checkbox"/> Disabling <input type="checkbox"/> Functional <input type="checkbox"/> Other														
Towed Due to Damage															Towed Due to Damage														
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown															<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown														
Vehicle/Pedestrian Heading															Vehicle/Pedestrian Heading														
<input type="checkbox"/> North <input checked="" type="checkbox"/> East <input type="checkbox"/> South <input type="checkbox"/> West <input type="checkbox"/> Unknown															<input type="checkbox"/> North <input checked="" type="checkbox"/> East <input type="checkbox"/> South <input type="checkbox"/> West <input type="checkbox"/> Unknown														
Property Damaged By This Vehicle Owner/Address															Property Damaged By This Vehicle Owner/Address														
Tow Truck Company															Tow Truck Company														
															Hill Brothers Towing														
Driver and Passenger Names															If Deceased, Give Date of Death														
PENNER, RODNEY T.															ERICKSON, MICHAELA R.														
PENNER, RODNEY T.															ERICKSON, MICHAELA R.														
Officer's Signature															Reviewed By														
1054-Boll, Hunter																													
ID Number															Date														
1054-															12/17/2019														
Date Notified															Time														
12/17/19															08:20														
Date Arrived															Time														
12/17/19															08:20														

LARGE VEHICLE AND FATAL CRASH SUPPLEMENT

Vehicle 1 : Carrier Name: LOWE'S HOME CENTERS LLC
 Address: 1000 LOWES BLVD
 City/State: MOORESVILLE / NC

ICC# _____
 DOT# 97236
 MVI# _____

Vehicle : Carrier Name: _____
 Address: _____
 City/State: _____

ICC# _____
 DOT# _____
 MVI# _____

V1 V VEHICLE CONFIGURATION <input type="checkbox"/> <input type="checkbox"/> 1 Passenger Car (placarded) <input type="checkbox"/> <input type="checkbox"/> 2 Light truck (van, mini-van, panel, pickup, sport utility vehicle) (placarded) <input type="checkbox"/> <input type="checkbox"/> 3 Bus (seats for 9-15 people, including the driver) <input type="checkbox"/> <input type="checkbox"/> 4 Bus (seats for more than 15 people, including the driver) <input type="checkbox"/> <input type="checkbox"/> 5 Single-Unit Truck (> 10,000 lbs) <input type="checkbox"/> <input type="checkbox"/> 6 Single-Unit Truck (3 axes or more) <input type="checkbox"/> <input type="checkbox"/> 7 Truck & Full Trailer <input type="checkbox"/> <input type="checkbox"/> 8 Truck Tractor (Bobtail) <input type="checkbox"/> <input type="checkbox"/> 9 Tractor/Semitrailer <input type="checkbox"/> <input type="checkbox"/> 10 Tractor/Double Trailer: A Standard B Rocky Mountain C Tumblebug D Truck/Trailer-Trailer <input type="checkbox"/> <input type="checkbox"/> 11 Tractor/Triples Trailer <input type="checkbox"/> <input type="checkbox"/> 12 Unknown Truck, can't classify	V1 V CARGO BODY TYPE <input type="checkbox"/> <input type="checkbox"/> 1 Bus (Seats for 9-15 people including driver) <input type="checkbox"/> <input type="checkbox"/> 2 Bus (Seats for more than 15 people) <input type="checkbox"/> <input type="checkbox"/> 3 Van/Enclosed <input type="checkbox"/> <input type="checkbox"/> 4 Cargo Tank <input type="checkbox"/> <input type="checkbox"/> 5 Flatbed <input type="checkbox"/> <input type="checkbox"/> 6 Concrete Mixer <input type="checkbox"/> <input type="checkbox"/> 7 Auto Transporter <input type="checkbox"/> <input type="checkbox"/> 8 Garbage/Refuse <input type="checkbox"/> <input type="checkbox"/> 9 Grain Trailer <input type="checkbox"/> <input type="checkbox"/> 10 Pole Trailer <input type="checkbox"/> <input type="checkbox"/> 11 Chip Trailer <input type="checkbox"/> <input type="checkbox"/> 12 Gravel/End/Belly Dump <input type="checkbox"/> <input type="checkbox"/> 13 Pneumatic/Mech. Hopper <input type="checkbox"/> <input type="checkbox"/> 14 Other <input type="checkbox"/> <input type="checkbox"/> 15 Not Applicable ACCESS CONTROL <input type="checkbox"/> No Access Control <input type="checkbox"/> Full Access Control <input type="checkbox"/> Partial Access Control	V1 V GVWR Pwr Unit Only <input type="checkbox"/> <input type="checkbox"/> 10,000 lbs or less <input type="checkbox"/> <input type="checkbox"/> 10,001 lbs — 28,000 lbs <input type="checkbox"/> <input type="checkbox"/> more than 28,000 lbs Citation issued as result of crash Large Vehicle driver only: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Pending <input type="checkbox"/> Unknown Trafficway <input type="checkbox"/> Two-way, not divided <input type="checkbox"/> Two-way, divided, unprotected median <input type="checkbox"/> Two-way, divided, positive median barrier <input type="checkbox"/> One-way, not divided <input type="checkbox"/> Not reported <input type="checkbox"/> Unknown																																																																		
V1 V CDL Class <input type="checkbox"/> <input type="checkbox"/> Class A <input type="checkbox"/> <input type="checkbox"/> Class B <input type="checkbox"/> <input type="checkbox"/> Class C <input type="checkbox"/> <input type="checkbox"/> Class D <input type="checkbox"/> <input type="checkbox"/> No License V1 V Hazardous Material <input type="checkbox"/> <input type="checkbox"/> Placarded <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> <input type="checkbox"/> Release of HM <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <input type="checkbox"/> Placard ID # 1640566138 <input type="checkbox"/> <input type="checkbox"/> Placard ID # _____ <input type="checkbox"/> <input type="checkbox"/> HM Hazard Class _____ <input type="checkbox"/> <input type="checkbox"/> HM Hazard Class _____ HM Proper Shipping Name: _____	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:10%;">V1</th> <th style="width:10%;">V</th> <th style="width:80%;">Sequence of Events</th> </tr> </thead> <tbody> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>A. Ran off road</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>B. Jackknife</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>C. Overturn</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>D. Downhill Runaway</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>E. Cargo loss or shift</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>F. Explosion or fire</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>G. Separation of units</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>H. Collision involving pedestrian</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>I. Collision involving motor vehicle in transport</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>J. Collision involving parked motor vehicle</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>K. Collision involving train</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>L. Collision involving motorcycle</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>M. Collision involving animal</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>N. Collision involving fixed object</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>O. Collision involving other movable object</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>P. Noncollision: Cross median/centerline</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>Q. Noncollision: Equipment Failure</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>R. Noncollision: Other</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>S. Noncollision: Unknown</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>T. Collision w/work zone maintenance equipment</td></tr> <tr><td>1 2 3 4</td><td>1 2 3 4</td><td>U. Collision with unknown movable object</td></tr> </tbody> </table>		V1	V	Sequence of Events	1 2 3 4	1 2 3 4	A. Ran off road	1 2 3 4	1 2 3 4	B. Jackknife	1 2 3 4	1 2 3 4	C. Overturn	1 2 3 4	1 2 3 4	D. Downhill Runaway	1 2 3 4	1 2 3 4	E. Cargo loss or shift	1 2 3 4	1 2 3 4	F. Explosion or fire	1 2 3 4	1 2 3 4	G. Separation of units	1 2 3 4	1 2 3 4	H. Collision involving pedestrian	1 2 3 4	1 2 3 4	I. Collision involving motor vehicle in transport	1 2 3 4	1 2 3 4	J. Collision involving parked motor vehicle	1 2 3 4	1 2 3 4	K. Collision involving train	1 2 3 4	1 2 3 4	L. Collision involving motorcycle	1 2 3 4	1 2 3 4	M. Collision involving animal	1 2 3 4	1 2 3 4	N. Collision involving fixed object	1 2 3 4	1 2 3 4	O. Collision involving other movable object	1 2 3 4	1 2 3 4	P. Noncollision: Cross median/centerline	1 2 3 4	1 2 3 4	Q. Noncollision: Equipment Failure	1 2 3 4	1 2 3 4	R. Noncollision: Other	1 2 3 4	1 2 3 4	S. Noncollision: Unknown	1 2 3 4	1 2 3 4	T. Collision w/work zone maintenance equipment	1 2 3 4	1 2 3 4	U. Collision with unknown movable object
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FATAL CRASH ONLY:

Notification Time EMS
 (military time)
 0000_not notified

Arrival Time EMS

EMS time at hospital
 of Most Severely Injured
 0000_no one transported

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Name of person/s involved

BAC Test Given

Method of Alcohol
 Determination (On-scene)
 (use codes below)

Ejection Path
 (use codes below)

1. _____	Y	N	?	Refused
2. _____	Y	N	?	Refused
3. _____	Y	N	?	Refused
4. _____	Y	N	?	Refused
5. _____	Y	N	?	Refused

1. Evidential Test (Breath, Blood, Urine)
 2. Preliminary Breath Test (PBT)
 3. Behavioral (Field Sobriety Test)
 4. Observed (Smell, speech, etc)
 5. Other (saliva test, tissue test)
 6. Passive Alcohol Sensor (PAS)

1. Not ejected/not applicable
 2. Through side door opening
 3. Through side window
 4. Through windshield
 5. Through back windows
 6. Through back door/tailgate opening
 7. Out roof opening (sunroof, top down)
 8. Out roof (top up)
 9. Other path (e.g. back of pickup)
 10. Unknown

Roadway Surface Type 1 Concrete 2 Blacktop (bituminous) 3 Slag, Gravel or stone 4 Dirt 5 Other	<table style="width:100%;"> <tr> <td style="width:33%; text-align: center;">Veh1</td> <td style="width:33%; text-align: center;">Veh2</td> <td style="width:33%; text-align: center;">Veh3</td> </tr> <tr> <td colspan="3">Est. Speed _____</td> </tr> <tr> <td colspan="3">Number of Traffic Lanes: _____</td> </tr> </table>	Veh1	Veh2	Veh3	Est. Speed _____			Number of Traffic Lanes: _____		
Veh1	Veh2	Veh3								
Est. Speed _____										
Number of Traffic Lanes: _____										

On 12/17/2019 at approximately 0820 hours, Officer Boll was dispatched to the intersection of Spokane Avenue and East 2nd Street in reference to a two-vehicle accident. Boll arrived on scene and observed there to be a 2020 white cargo truck with Indiana license plates "2891864" and a gray 2017 Ford Fiesta with MT license plates "CLG361" parked on the shoulder of E 2nd St.

Boll made contact with both driver's who declined medical attention. The driver of the Fiesta was identified as Michaela Rochelle Erickson. Erickson stated she had turned left onto E 2nd St from Spokane Ave when her vehicle was struck from behind. Erickson's MT driver's license and registration were valid, her insurance was Progressive Direct Insurance Company, policy number "926437275." The entire rear end of the Fiesta was damaged and not functional. Photographs were taken and placed into the Whitefish Police Department evidence file. Hill Brother's Towing secured the vehicle and transported it to their tow yard. Prior to leaving the scene, Erickson stated she was going to the hospital to get checked out as she did not feel well. A short time later, Erickson produced medical paperwork from North Valley Hospital. The paperwork showed that Erickson was diagnosed with strained neck muscles and ligaments.

The driver of the white 'Lowe's' Cargo truck was identified as Rodney Todd Penner. Penner stated he had turned left onto E 2nd St from Spokane Ave behind the Fiesta. Upon making the turn, the fiesta slowed due to the traffic in front of it. Penner stated he didn't have enough time to apply his brakes and hit the rear end of the Fiesta. Penner's MT commercial driver's license and vehicle registration were valid, the insurance was Old Republic Insurance Company, policy number "MWTB311325." The front bumper and grille were damaged, but the vehicle was functional. Photographs of the damage were taken and placed into the Whitefish Police Department evidence file. Penner was issued a citation for following too closely and he drove his vehicle from the scene.

Officer H. Boll
WPD